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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,767	10/30/2003	Andrew Schydlowsky	15651-002001	8887

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EXAMINER	
MCALLISTER, STEVEN B	
ART UNIT	**PAPER NUMBER**
3627	

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/697,767	SCHYDLOWSKY, ANDREW	
	Examiner	Art Unit	
	Steven B. McAllister	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 July 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *26-49* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26-49* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ~~8/2005~~. 8/2004
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 35-37 and 39-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Baron (6,482,451).

Baron shows a kit for making customizable food comprising a base item comprising a drink (e.g., milk) and at least one additive comprising a flavorant, wherein when combined the additive alters a characteristic of the base item comprising at least taste.

As to claim 39, the base item is in a first package and the additive package is held adjacent the first package in consuming the item.

As to claim 40, the base item and the at least one additive package are combined into one package during consumption.

As to claims 42 and 43, the TETRA-PACK package which contains the base item of Baron when configured for consumption comprises a holder (comprising e.g., an open hole for drinking into which the additive package is held) adapted to hold the at least one additive package.

Claims 35-37 and 39-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Lloyd et al (2002/0110622).

Lloyd shows a kit having a base item and at least one additive (milk and cereal, respectively), wherein the additive and base item are packaged separately.

As to the dependent claims, Lloyd shows all elements.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 38 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Baron.

Baron shows all elements of the claim including the plurality of packaged additives, since it shows selling unflavored beverages with a number of different flavorings.

Alternatively, Baron shows all elements except providing a plurality of additives. However, the examiner takes official notice that it is notoriously old and well known in the art to provide a plurality of packaged additives. It would have been obvious to one

of ordinary skill in the art to modify the apparatus of Baron by providing a plurality of additives in order to provide additional choices for the buyer.

Claims 26-34 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baron.

Baron shows a kit for making a product comprising a product; and at least one additive packaged separately from the product.

Baron does not explicitly show that the product is a dietary supplement product. However, the examiner takes official notice that it is notoriously old and well known in the art to provide a dietary supplement product (e.g., Baron shows unflavored milk. It is well known to provide a milk fortified with additional vitamins, etc.). It would have been obvious to one of ordinary skill in the art to modify the apparatus of Baron by providing a dietary supplement in order to provide a healthier product.

As to claims 29 and 31, Baron shows at least a chocolate flavorant or a pharmaceutical.

As to claim 46, the base item is in a first package and the additive package is held adjacent the first package in consuming the item.

As to claim 47, the base item and the at least one additive package are combined into one package during consumption.

As to claims 48 and 49, the TETRA-PACK package which contains the base item of Baron when configured for consumption comprises a holder (comprising e.g., an

open hole for drinking into which the additive package is held) adapted to hold the at least one additive package.

As to claims 33 and 34, Baron shows all elements except providing a container having a plurality of servings and providing a plurality of individually packaged additives, the individually packaged additives equal to at least the number of single servings. However, the examiner takes official notice that it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Baron by providing a container providing a plurality of servings and providing plurality of individually packaged additives at least equal to the number of single servings in order to allow the user to enjoy multiple flavored servings on multiple occasions without having to re-use the first additive package.

Claims 26-28, 30-32 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al

Lloyd shows a kit for making a product comprising a product; and at least one additive packaged separately from the product.

Lloyd does not explicitly show that the product is a dietary supplement product. However, the examiner takes official notice that it is notoriously old and well known in the art to provide a dietary supplement product (e.g., Lloyd shows milk. It is well known to provide a milk fortified with additional vitamins, etc.). It would have been obvious to

one of ordinary skill in the art to modify the apparatus of Lloyd by providing a dietary supplement in order to provide a healthier product.

As to claim 31, the additive (for instance Kix cereal as recited by Lloyd) provides nutrients (Kix Ingredients: corn meal, whole grain oats (included the oat bran), sugar, corn starch, canola oil, corn syrup, salt, calcium carbonate, modified corn starch, trisodium phosphate, wheat starch, vitamin E (mixed topopherols) added to retain freshness. Vitamins and minerals: iron and zinc (mineral nutrients), vitamin C (sodium ascorbate), a B vitamin (niacinamide), vitamin B6 (pyridoxine hydrochloride), vitamin B2 (riboflavin), vitamin B1 (thiamin mononitrate), vitamin A (palmitate), a B vitamin (folic acid), vitamin B12, vitamin D.)

As to all other dependent claims, it is noted that Lloyd shows all elements.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is 571-272-6785. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven B. McAllister
Primary Examiner
Art Unit 3627

Steven B. McAllister

STEVE B. MCALLISTER
PRIMARY EXAMINER